



0000160248

BEFORE THE ARIZONA CORPORATION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

FEB - 9 2015

SUSAN BITTER SMITH - Chairman
 BOB STUMP
 BOB BURNS
 DOUG LITTLE
 TOM FORESE

DOCKETED BY

nr

IN THE MATTER OF TALK AMERICA
 SERVICES, LLC FOR APPROVAL OF AN
 APPLICATION FOR A CERTIFICATE OF
 CONVENIENCE AND NECESSITY TO PROVIDE
 INTRASTATE TELECOMMUNICATIONS
 SERVICES.

DOCKET NO. T-20918A-14-0342

DECISION NO. 74943**ORDER**

Open Meeting
 February 3 and 4, 2015
 Phoenix, Arizona

BY THE COMMISSION:

On September 19, 2014, Talk America Services, LLC ("TAS" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange and interexchange telecommunications services within the State of Arizona. TAS's application also requests a determination that its proposed services are competitive in Arizona.

On November 17, 2014, TAS filed a response to the Commission's Utilities Division's ("Staff") First Set of Data Requests.

On November 25, 2014, TAS filed a response to Staff's Second Set of Data Requests.

On December 5, 2014, TAS filed a Notice of Filing Affidavit of Publication stating that notice of the application had been published in the *Arizona Republic*, a newspaper of general circulation in the State of Arizona.

On December 29, 2014, Staff filed a Staff Report recommending approval of TAS's application, subject to certain conditions.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the

Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. TAS is a foreign limited liability corporation organized under the laws of Delaware, with its headquarters in Little Rock, Arkansas.¹

2. TAS is an indirect subsidiary of Communications Sales & Leasing, Inc, which will be the publicly traded parent company of TAS and CSL Capital.² CSL Capital will be a direct subsidiary of Communication Sales & Leasing and the direct holding company of TAS.³

3. On September 19, 2014, TAS filed an application with the Commission to provide resold local exchange and interexchange telecommunications services on a statewide basis in Arizona. The application also requested a determination that the Company's proposed services are competitive in Arizona.

4. Notice of TAS's application was given in accordance with the law.

5. Staff recommends approval of TAS's application for a CC&N to provide intrastate telecommunications services in Arizona, subject to the following conditions:

- a. TAS complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
- b. TAS abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-13-0199;
- c. TAS be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Company is the only provider of local exchange service facilities;
- d. TAS be required to notify the Commission immediately upon changes to the Company's name, address or telephone number;
- e. TAS cooperate with Commission investigations including, but not limited to customer complaints;
- f. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. TAS indicated that at the end of the first twelve months of operation the net book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$0. Staff has reviewed the rates to be charged by TAS and believes they are just and

¹ Staff Report at 1.

² Id.

³ Id.

reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates TAS charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value information provided was not given substantial weight in this analysis;

- g. TAS offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- h. TAS offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
- i. That the Commission authorize TAS to discount its rates and charges to the marginal cost of providing the services.

6. Staff further recommends that TAS's CC&N be considered null and void after due process if TAS fails to comply with the following conditions:

- a. If TAS does not provide local exchange service to end users within (3) three years from the date of the Order in this docket, that TAS be required to notify the Commission of this fact and to request cancellation of its CC&N through a filing made in this docket;
- b. TAS shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service to its first customer, whichever comes first. The tariffs submitted shall coincide with the Application;
- c. TAS shall notify the Commission through a compliance filing within 30 days of the commencement of service to its first end-user customer; and
- d. TAS shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). TAS will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

7. Staff also recommends TAS's proposed services be classified as competitive given the availability of alternatives, the inability of the Company to adversely affect the local exchange or long distances service markets, and TAS's lack of market power.

...

...

...

1 **Technical Capability**

2 8. TAS intends to provide its proposed services to residential end-user customers through
3 a Master Wholesale Agreement ("Agreement") with Windstream's Competitive Local Exchange
4 Companies ("CLECs").⁴ The Company does not intend to provide services to business customers.⁵

5 9. The Company is seeking authority to provide intrastate telecommunications services
6 in each of the contiguous United States and the District of Columbia and has received authority from
7 Alabama, Arkansas, Iowa, North Carolina, Vermont, Washington, and Wisconsin.⁶

8 10. TAS's team of officers and managers has a combined total of forty-six (46) years'
9 experience in the telecommunications industry.⁷

10 11. The Company does not intend to have any employees in Arizona, but will incorporate
11 maintenance and repair requests into the Agreement which will allow for Windstream CLECs to
12 resolve any requests.⁸

13 12. Staff believes TAS has the technical capabilities to provide its proposed services in
14 Arizona.

15 **Financial Capabilities**

16 13. TAS provided pro-forma financial statements for the twelve (12) months ending
17 December 31, 2012, listing total assets of \$29,444,000; total equity of \$16,314,000; and a net income
18 of \$24,513,000. For the twelve (12) months ending December 31, 2013, TAS listed total assets of
19 \$21,881,000; total equity of \$12,222,000; and a net income of \$16,513,000.⁹

20 **Rates and Charges**

21 14. Staff believes TAS will have to compete with other incumbent local exchange carriers
22 ("ILECs"), and various CLECs, and interexchange carriers ("IXCs") in Arizona in order to gain new
23
24
25

26 ⁴ Staff Report at 1.

27 ⁵ Id.

28 ⁶ Id.

⁷ Id. at 2.

⁸ Id.

⁹ Id.

1 customers.¹⁰ Staff states it does not believe TAS will be able to exert market power given its status
2 as a new entrant in the market.¹¹

3 15. Pursuant to A.A.C. R14-2-1109, the rates charged for each service TAS proposes to
4 provide may not be less than the Company's total service long-run incremental cost of providing
5 service.

6 16. TAS projects that for the first twelve (12) months of operation in Arizona, it will have
7 a net book value of zero (0).¹²

8 17. Staff states that in general, rates for competitive services are not set according to rate
9 of return regulation. Staff believes that TAS's rates will be heavily influenced by the market.¹³
10 Therefore, Staff states that while it considered the fair value rate base ("FVRB") information
11 submitted by TAS, that information was not afforded substantial weight in Staff's analysis.¹⁴

12 **Local Exchange Carrier Specific Issues**

13 18. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, TAS must make
14 number portability available to facilitate the ability of customers to switch between authorized local
15 carriers within a given wire center without changing their telephone number and without impairment
16 to quality, functionality, reliability, or convenience of use.

17 19. Pursuant to A.A.C. R14-2-1204(A), all telecommunication service providers that
18 interconnect to the public switched telephone network shall provide funding for the AUSF. TAS
19 shall make payments to the AUSF described under A.A.C. R14-2-1204(B).

20 20. In Commission Decision No. 74208 (December 3, 2013), the Commission approved
21 quality of service standards for Qwest to insure customers received a satisfactory level of service. In
22 this matter, Staff believes TAS should be ordered to abide by those service standards.

23 21. In areas where the Company is the only local exchange service provider, Staff
24 recommends that TAS be prohibited from barring access to alternative local exchange service
25 providers who wish to serve the area.

26 ¹⁰ Id.

27 ¹¹ Id.

¹² Id. at 3.

¹³ Id.

28 ¹⁴ Id.

22. TAS will provide all customers with 911 and E911 service where available, or will coordinate with ILECs and emergency service providers to facilitate the service.

23. Pursuant to prior Commission Decisions, TAS may offer customer local area signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or unblock each individual call at no additional cost. TAS must offer Last Call Return service, which will not allow the return of calls to telephone numbers that have the privacy indicator activated.

Complaint Information

24. TAS's application states that none of the Company's officers, directors, partners, nor managers have been or are currently involved in any formal or informal compliant proceedings before any state or federal regulatory agency, commission, administrative, or law enforcement agency.¹⁵

25. TAS states that none of the Company's officers, directors, partners, or managers have been involved in any civil or criminal investigations, or had judgments entered in any civil matter, or by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.¹⁶

26. Staff states that the Commission's Consumer Services Section reported that no complaints, inquiries, or opinions have been filed against TAS from January 1, 2011 to October 1, 2014. According to Staff, TAS is in good standing with the Commission's Corporations Division.¹⁷

27. As of the filing of the Staff Report, TAS had no complaints filed with the Federal Communications Commission.¹⁸

Competitive Review

28. TAS's application requests that its proposed telecommunications services in Arizona be classified as competitive. Staff believes TAS's proposed services should be classified as competitive because TAS will have to compete with CLECs and ILECs to gain customers; there are alternative providers to TAS's proposed services; ILECs hold a virtual monopoly in local exchange

¹⁵ Application at A-11.

¹⁶ Staff Report at 4.

¹⁷ Id.

¹⁸ Id.

1 and IXC's markets; and that TAS will not have the ability to adversely affect the local exchange
2 markets in Arizona.¹⁹

3 29. Based on the above factors, Staff concludes that TAS's proposed services should be
4 classified as competitive.

5 30. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

6 **CONCLUSIONS OF LAW**

7 1. TAS is a public service corporation within the meaning of Article XV of the Arizona
8 Constitution, A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over TAS and the subject matter of the application.

10 3. Notice of the application was given in accordance with the law.

11 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
12 CC&N to provide competitive telecommunication services.

13 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
14 Statutes, it is in the public interest for TAS to provide the resold local telecommunications services as
15 set forth in the application.

16 6. TAS is a fit and proper entity to receive a CC&N authorizing it to provide intrastate
17 telecommunications services in Arizona, subject to Staff's recommendations as set forth herein.

18 7. TAS's fair value rate base is not useful in determining just and reasonable rates for the
19 competitive services it proposes to provide to Arizona customers.

20 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it
21 is just and reasonable and in the public interest for TAS to establish rates and charges that are not less
22 than TAS's total service long-run incremental costs of providing the competitive services approved
23 herein.

24 9. Pursuant to A.R.S. § 40-282, the application in this matter may be approved without a
25 hearing.

26 10. Staff's recommendations are reasonable and should be adopted.

27
28 ¹⁹ Id. at 5-8.

ORDER

IT IS THEREFORE ORDERED that the application of Talk America Services, LLC for a Certificate of Convenience and Necessity to provide intrastate telecommunications in Arizona, is hereby approved, subject to Staff's recommendations as more fully described in Findings of Fact Nos. 5 and 6.

IT IS FURTHER ORDERED that Talk America Services, LLC's telecommunications services are competitive in Arizona.

IT IS FURTHER ORDERED that if Talk America Services, LLC fails to comply with the Staff recommendations described in Findings of Fact No. 6, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 9th day of February 2015.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SP/ru/tv

1 SERVICE LIST FOR:

TALK AMERICA SERVICES, LLC

2 DOCKET NO.:

T-20918A-14-0342

3 Joan Burke

4 LAW OFFICES OF JOAN S. BURKE, P.C.

5 1650 N. First Ave.

6 Phoenix, AZ 85003

Attorneys for Talk America Services, LLC

7 Janice Alward, Chief Counsel

8 Legal Division

9 ARIZONA CORPORATION COMMISSION

10 1200 West Washington Street

11 Phoenix, AZ 85007

12 Steven M. Olea, Director

13 Utilities Division

14 ARIZONA CORPORATION COMMISSION

15 1200 West Washington Street

16 Phoenix, AZ 85007